

Appeal of Isidor Weinstein Investment Co.

Isidor Weinstein Investment Co., appellant herein, is a California corporation engaged primarily in renting real property. During the appeal years it owned 15 parcels of rental property in California and one parcel in the State of Washington. The Washington property produced about 15 percent of its rental income. All of appellant's real estate operations, including those in Washington, were administered from its headquarters in San Francisco. All of its accounting, management and administrative functions were performed at that office.

On its California franchise tax returns for the years in question, appellant computed its **California**-source income by separate accounting, excluding from the calculation all income from its Washington property. After reviewing the returns respondent determined, first, that appellant's rental operations were a unitary business, and second, that its income from both the California and Washington properties was "business income" subject to formula apportionment under the Uniform Division of Income for Tax Purposes **Act (UDITPA)**. (Rev. & Tax. Code, **§§ 25120-25139**.) Respondent then requested several times in writing that appellant submit information which would allow an accurate apportionment, but appellant failed to comply. Respondent therefore conducted a field audit which resulted in the proposed assessments **at issue**. In addition, respondent assessed 25 percent penalties for failure to furnish information requested in writing.

Appellant contends that its rental operations, were not a "business," and that **the income from the** Washington property was therefore not "business income" as that term is defined in UDITPA. In the alternative, appellant argues that even if the rental operations were a business, the formula apportionment provisions of UDITPA should not apply because the business was not unitary. Appellant also objects to the imposition of the penalties. **For** the reasons expressed below, we have **concluded** that appellant's contentions are without merit.

With regard to the unitary business question, the California Supreme Court has held that a business is unitary where the following factors are present: **(1)** unity of ownership; **(2)** unity of operation as evidenced by central purchasing, advertising, accounting and management divisions; and **(3)** unity of use in a centralized executive force and general system of operation. (**Butler Bros. v. McColgan**, 17 Cal. 2d 664, 678 [111 P.2d 334] (1941), **aff'd**, 315 U.S. 501 [86 L. Ed. 991] (1942).) The **court** has also stated that a business is unitary

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when the operation of the business within California contributes to or is dependent upon the operation of the business outside the state. (Edison California Stores, Inc. v. McColgan, 30 Cal. 2d 472, 481 [183 P. 2d 16] (1947).)

Here appellant's rental activities constituted a "business" for franchise tax purposes. (See Rev. 6 Tax. Code, § 23101; see also Appeal of Ebee Corp., etc., Cal. St. Bd. of Equal., Feb. 19, 1974.) Moreover, respondent's determination that the business was unitary is reasonable, since the operations within and without California were the same type of business and were conducted from a centralized headquarters. Appellant alleges that the Washington rentals did not depend on or contribute to the business in this state, but it has submitted no evidence to support this position. Accordingly, lacking any evidence to disprove respondent's determination, we conclude that appellant's rental business in California and Washington was unitary. (See Appeal of John Deere Plow Company of Moline, Cal. St. Bd. of Equal., Dec. 13, 1961.)

Turning now to the question of business income, Revenue and Taxation Code section 25120, subdivision (a), provides:

"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

Appellant's income from the Washington property unquestionably comes within this definition of business income. The examples in the regulation upon which appellant relies (Cal. Admin. Code, tit. 18, reg. 25120, subd. (c) (1), examples (D) and (E) (Art. 2)) are not to the contrary. Those examples deal with taxpayers in the retailing industry who earn rental income which is unrelated to their regular business activity, while in this case renting property was appellant's regular business activity.

Finally, the penalties for failure to furnish information requested in writing were properly imposed. Such penalties are authorized by Revenue and Taxation

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Code section 25933, "unless the failure is due to reasonable cause and not due to willful neglect." Appellant has made no attempt to explain or justify its failure to respond to respondent's inquiries.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Isidor Weinstein Investment Co. against proposed assessments of additional franchise tax and penalties in the total amounts of \$1,509.19, \$1,339.24 and \$1,072.30 for the income years ended January 31, 1970, January 31, 1971, and January 31, 1972, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of April, 1977, by the State Board of Equalization.

Sally Ann Reynolds, Chairman
George G. Jones, Member
Robert L. ..., Member
_____, Member
_____, Member

ATTEST: *W. W. ...*, Executive Secretary